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April 20, 2012

Nathan W. Kellum, Chief Counsel  
Center for Inalienable Rights  
699 Oakleaf Office Lane, Suite 107  
Memphis, TN 38117

Re: Adam Gray

Dear Mr. Kellum:

This letter follows our e-mail exchange in which you acknowledged my need for additional time to respond to your March 22, 2012 letter to City officials regarding Mr. Gray. We are now sending this response to your letter.

Mr. Gray apparently desires to preach on the streets and sidewalks of the City during the annual North Carolina Potato Festival. The Festival is conducted under a Special Citywide Festival Privilege License issued by the City that allows the permittee to determine the location of vendor stands and display booths. This event is a family oriented festival that dates back well over 50 years. Large crowds numbering in the thousands attend the festival and great care must be taken to ensure the safe and orderly flow of pedestrian traffic, as well as ready accessibility by law enforcement and emergency services personnel. The official website for the Festival (located at [www.ncpotatofestival.com](http://www.ncpotatofestival.com)) includes photos that show the type of pedestrian congestion typically found at any given moment at the Potato Festival.

Mr. Gray has the same rights as any person to secure a booth from the Festival organizers. The City Manager, Rich Olson, has written him about this but he has not yet applied for a booth. Regardless of whether Mr. Gray wants to obtain a booth, he has the same rights to enjoy the Potato Festival as any other person.

Mr. Gray is free to enter the Festival area, by himself or with others, to engage in dialogue, one-on-one conversation and literature distribution. In 2011, he sought to take over an area by placing a ladder, boxes and cooler in a congested area that greatly inhibited pedestrian traffic flow and limited access by police and emergency services personnel access. He apparently wanted to occupy and control space, other than a vendor or display booth where other booths were located, to the exclusion of others, and without regard to how his situation affected others. This presented a public safety concern which led city police to ask him to move his set-up to a less congested area. He voluntarily agreed to move, accepted assistance from City Police and set his items up immediately across the street from the controlled Festival area. In both areas, Mr. Gray was also loud and, at times, disruptive to other event activities. Although City or event officials could have asked him not to disrupt other events, no official sought to control the content of his speech. He continued engaging in any expressive activity he wanted to and does not complain of any interference from those circumstances.

Mr. Gray remains free to enter the Festival area and to walk around, individually or in small groups, to engage in dialogue, one on one conversation or distribute literature. He is welcome to stand in any location that is not occupied by or controlled by a vendor or Festival personnel to engage in expressive activity. He will not, however, be permitted to unreasonably or unsafely obstruct the flow of pedestrian traffic or impede access of police and emergency services personnel. Nor will he be allowed to amplify his speech through electronic or other means particularly where such would disrupt or interfere with other scheduled proceedings at the Festival.

As you know, the City is entitled to impose reasonable clear time, place and manner restrictions on public speech and expressive activity. See Ward v. Rock Against Racism, 491 U.S. 781, 789 (1989) He is not required to obtain a permit, so this is not a prior restraint case. See Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546 (1975) But City police and other officials may impose restrictions on his activities when they pose a threat to public safety and general welfare. See Teesdale v. City of Chicago, 792 F. Supp.2d 978, 990-91 (N.D. Ill. 2011) The City expects that he adhere to these restrictions. They are not based on the content of Mr. Gray's speech. They are narrowly tailored to serve a significant governmental interest - protecting public safety and ensuring the free and orderly movement of people in the Festival area. These are "undoubtedly legitimate government interests" as described in Bays v. City of Fairborn, 668 F.3d 814, 822 (6<sup>th</sup> Cir. 2012). As such, these types of restrictions pass muster under

Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37  
(1983).

I hope this sufficiently clarifies matters. If not, please  
let me know and we will be glad to provide further information. I  
am

Yours sincerely,

John D. Leidy

JDL/jgl

cc: Joseph W. Peel, Mayor  
Rich Olson, City Manager